

**FILED**

**JUN - 1 2006**

**RICHARD W. WIERING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**MARIO REYES, JR.,**

**No. C 05-1002 MHP (pr)**

**Plaintiff,**

**ORDER OF DISMISSAL**

**v.**

**T. VANIZ; et al.,**

**Defendants.**

Mario Reyes, an inmate currently housed at Pleasant Valley State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983. The court reviewed the complaint and dismissed it with leave to amend. The amended complaint is now before the court for review pursuant to 28 U.S.C. §1915A.

When the court reviewed the original complaint, it made three determinations. First, it determined that the complaint stated a First Amendment claim against John Does 1-4, who allegedly lost, destroyed, or diverted a habeas petition that Reyes had mailed to the Kern County Superior Court. Second, the court determined that the complaint did not state a claim for relief against defendant Vaniz, as it did not appear Vaniz did anything other than allegedly mishandle Reyes' inmate grievances and appeals, and that did not give rise to a § 1983 claim for relief. Third, the court determined that the complaint did not state a claim for relief against any defendant for denial of access to the courts because the complaint did not allege an actual injury. The court granted leave to amend so that Reyes could try to cure the

1 deficiencies identified in the order, i.e., attempt to allege a different basis of liability for  
2 defendant Vaniz and attempt to allege an actual injury to support a claim for denial of access  
3 to the court. The court also instructed that Reyes had provide true names and current  
4 addresses for each of the John Doe defendants.

5 Reyes filed an amended complaint but did not provide true names and addresses for  
6 each of the Doe defendants.

7 The amended complaint does not state a § 1983 claim against defendant Vaniz.  
8 Although Reyes names Vaniz in the "legal claims" portion of his amended complaint, see  
9 Amended Complaint, p. 7-8, elsewhere in his amended complaint he explains that the people  
10 who failed and refused to send the mail were John Does 1-4 and that Vaniz's role was in the  
11 denial of the administrative appeals, id. at 2-3, 6. As the court explained in its last order,  
12 Vaniz does not have liability based on the handling/mishandling of administrative appeals  
13 and grievances. Even if a defendant could be liable for his role in the administrative appeals  
14 process, the allegations of the amended complaint show that the First Amendment violation  
15 was already complete when Vaniz became involved in the process.

16 The amended complaint does not state a claim for denial of access to the courts  
17 because no actual injury was alleged. The alleged wrongful conduct was prison officials'  
18 failure to mail a habeas petition to the Kern County Superior Court in September 2003, so  
19 Reyes' mother had to file a copy of the petition in that court two months later. Reyes does  
20 not allege in his amended complaint how he was harmed by prison officials' alleged failure to  
21 mail the habeas petition, although the court had instructed him he needed to do so to state a  
22 claim for relief for denial of access to the courts. Reyes mentions that his petition for writ of  
23 certiorari was denied by the U.S. Supreme Court, but fails to suggest any connection between  
24 that event and the late-filed petition in the Kern County Superior Court. Reyes also mentions  
25 that he had cases in the Ninth Circuit and the Eastern District of California, but fails to allege  
26 how his late filing in Kern County impacted either of those cases. Indeed, the docket sheet  
27 for Reyes' case in the Eastern District of California shows that the court received three  
28 documents from Reyes at about the time the prison officials allegedly didn't put his materials

1 in the mail to the Kern County Superior Court. See Reyes v. McGrath, E. D. Cal. No. 02-  
 2 6207 OWW-LJO, docket #34 (amended petition, filed September 5, 2003); docket # 35  
 3 (notice of commencement of exhaustion in California courts of unexhausted grounds, filed  
 4 September 5, 2003) and docket # 36 (opposition to respondent's motion for panel rehearing  
 5 by petitioner, filed September 15, 2003); see also docket #32 (reflecting August 21, 2003  
 6 entry of 9th Circuit order reversing and remanding case to the district court "to allow  
 7 appellant the opportunity to amend his 2254 petition").

8 As a result of the foregoing, the case remains in the same posture as it did several  
 9 months ago: only one claim has been stated and that claim (for a First Amendment violation)  
 10 has been stated only against John Does 1-4. This brings the court to the Doe defendant  
 11 problem. In the Order Of Dismissal With Leave To Amend, the court explained that the  
 12 complaint could not be served on any Doe defendant until Reyes provided a true name and  
 13 current address for the Doe defendant:

14 A plaintiff may use Doe defendant designations to refer to defendants whose names  
 15 are unknown to plaintiff. Although the use of Doe defendants is acceptable to  
 16 withstand dismissal of the complaint at the initial review stage, using Doe defendants  
 17 creates its own problem: those persons cannot be served with process in this action  
 18 until they are identified by their real names. A plaintiff must promptly take steps to  
 19 discover the names of the unnamed defendants and provide that information to the  
 20 court in an amendment to his pleading. The burden remains on the plaintiff; the court  
 will not undertake to investigate the names and identities of unnamed defendants. The  
 court will not appoint an investigator or counsel to assist Reyes in learning the names  
 of the Doe defendants. Reyes must provide the true names and current addresses for  
 each of the John Doe defendants no later than **November 17, 2005** or show good  
 cause for his failure to name them (e.g., by showing each and every step he took to  
 learn their names and current addresses).

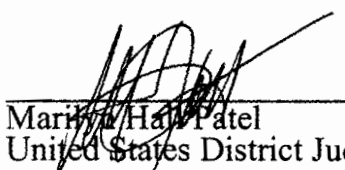
21 Order Of Dismissal With Leave To Amend, p. 3. Reyes did not provide the true names and  
 22 current addresses for any of the Doe defendants. Reyes apparently made no effort at all to try  
 23 to learn the names of any of the Doe defendants. He filed a motion for 60-day extension of  
 24 time on November 28, 2005 to provide those names. He wrote that he had no resources to  
 25 employ an investigator to obtain the names and claimed that he could use discovery "only  
 26 after service of process . . . has been rendered." Telling the court he would wait until service  
 27 of process occurred to learn the Doe defendants' identities was unhelpful because the court  
 28 had just told Reyes it wouldn't order service of process until Reyes provided names for the



1 Doe defendants. A claim for relief has been stated against only the Doe defendants, so his  
2 situation is unlikely to change: Reyes won't try to obtain the names for the Doe defendants  
3 until service of process occurs and the court needs those names to order service of process.  
4 The request for a 60-day extension of time to provide the Does names and the request is  
5 DENIED because good cause was not shown and it would be futile. (Docket # 9). Reyes did  
6 not indicate he intended to try to obtain the Doe defendants' names if given additional time,  
7 and the extension of time would only have moved the deadline to January 17, 2006, and that  
8 was more than five months ago. It has now been over eight months since the court ordered  
9 Reyes to provide true names and addresses for the Doe defendants. It appears clear to the  
10 court that Reyes cannot and will not provide the required information to serve process on the  
11 Doe defendants. For this reason, the court DISMISSES this action without prejudice to  
12 Reyes filing a new action if he ever learns the true names and addresses for the persons he  
13 now can identify only as Doe defendants.

14 IT IS SO ORDERED.

15 DATED: May 31, 2006

  
Marina Hall Patel  
United States District Judge